

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

MICHAEL T. BROOKS,
Plaintiff,

No. 6:15-cv-000983-MK
ORDER

v.

AGATE RESOURCES, INC., dba,
Trillium Community Health Plan,
Defendant.

AIKEN, District Judge:

On March 22, 2019, Magistrate Judge Mustafa Kasubhai issued his Findings and Recommendations (“F&R”) (doc. 198) recommending that defendant’s Motion to Dismiss (doc. 137) be granted and plaintiff’s amended complaint (doc. 135) with prejudice. 22, 2019. This case is now before me. *See* 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

When either party objects to any portion of a magistrate judge’s F&R, the district court must make a *de novo* determination of that portion of the magistrate

judge's report. See 28 U.S.C. § 636(b)(1); *McDonnell Douglas Corp. v. Commodore Business Machines, Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981), *cert denied*, 455 U.S. 920 (1982). Plaintiff has filed timely objections¹ (doc. 200), and defendant has filed a timely response to those objections (doc. 202). Thus, this Court reviews the F&R *de novo*.

Having reviewed the objections and responses, F&R, as well as the entire file in this case, the Court finds no error in the thorough order of the Magistrate Judge. Thus, the Court adopts the F&R (doc. 198) in its entirety. Accordingly, defendant's Motion to Dismiss (doc. 137) is GRANTED.

Further, since submitting his objections to the F&R, plaintiff has also filed what is styled as a Motion for Mistrial and New Trial (doc. 203) pursuant to Fed. R. Civ. Pro 59. Importantly, there has been no jury or bench trial in this matter, nor has a final judgment been entered. Plaintiff's motion fails as matter of law and is accordingly DENIED. Plaintiff's request for a change of venue is also denied as jurisdiction is proper in the District of Oregon.

In the motion for new trial, plaintiff continues to raise complaints about this case being assigned to a Magistrate Judge, and he requests that this Court vacate "all orders, motions and work done by Magistrate Judges." Pl.'s Mot for New Trial at 29. Plaintiff argues that he never consented to have this case heard by a magistrate

¹ The Court does not consider plaintiff's second "response" (doc. 211) as it was untimely, and the Court did not grant plaintiff leave to file supplemental briefing beyond what is allowed in the Local Rules.


judge, and it is true that full consent has not been given by the parties. The Court notes, however, that the District of Oregon's Local Rules "designates every Magistrate Judge to conduct all pretrial proceedings authorized by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72, without further designation or assignment." LR 72-1. The Court also randomly assigns newly filed civil cases to both Magistrate Judges and District Judges. See L.R. 16-1(a). Thus, in accord with Fed. R. Civ. P. 72, magistrate judges may preside in cases and issue non-dispositive orders on pretrial matters, even when consent is not given. However, when dealing with dispositive motions in cases where consent has not been given, Magistrate Judges must issue a F&R for the District Court's consideration. Fed. R. Civ. P. 72(b) An F&R is not a final order, and when objections are made by either party the district court must review the objected portions of the F&R under a *de novo* standard.

These procedures have been followed in this case. This case was initially assigned to Magistrate Judge Coffin, and later Magistrate Judge Russo and finally Magistrate Judge Kasubhai. All magistrate judges have entered non-dispositive orders regarding pre-trial matters. Plaintiff was free to appeal those orders to the District Court pursuant to Fed. R. Civ. P. 72(a), which he did on two occasions. (docs. 180 and 190). Further, when considering defendant's motion to dismiss, the Magistrate Judge issued a timely F&R, which is now before this Court. Thus, because this routine practice is authorized under Fed. R. Civ. P. 72 and 28 U.S.C. § 636, plaintiff's request that this Court strike all previous decisions by the Magistrate Judges in this case are denied.

As noted above, the Court ADOPTS Magistrate Judge Kasubhai's F&R (doc. 198) in its entirety. Accordingly, defendants Motion to Dismiss (doc. 137) is GRANTED, and plaintiff's Amended Complaint (doc. 135) is dismissed, with prejudice.

IT IS SO ORDERED.

Dated this 17th day of May 2019.



Ann Aiken
United States District Judge